

Part III - Administrative, Procedural, and Miscellaneous

Clean Renewable Energy Bonds

Notice 2006-7

SECTION 1. PURPOSE

This Notice provides guidance with respect to facilities that may be financed with the proceeds of clean renewable energy bonds under § 54(a) of the Internal Revenue Code (the Code). In addition, this Notice provides guidance with respect to the entities that may own facilities financed with the proceeds of clean renewable energy bonds and the entities that may issue clean renewable energy bonds. This Notice supplements Notice 2005-98, 2005-52 I.R.B. 1211, which was published on December 27, 2005.

SECTION 2. BACKGROUND

Section 1303 of the Energy Tax Incentives Act of 2005, Pub. L. No. 109-58, added § 54 to the Code. In general, § 54 authorizes up to \$800,000,000 of tax credit bonds to be issued by qualified issuers to finance certain renewable energy projects described in § 45(d) of the Code.

Section 54(a) provides that a taxpayer that holds a “clean renewable energy bond” on one or more credit allowance dates of the bond occurring during any taxable year is allowed as a nonrefundable credit against Federal income tax for the taxable year an amount equal to the sum of the credits determined under § 54(b) with respect to such dates. Section 54(d) provides that a “clean renewable energy bond” means any bond issued as part of an issue if: (1) the bond is issued by a qualified issuer pursuant

to an allocation by the Secretary to the issuer of a portion of the national clean renewable energy bond limitation under § 54(f)(2); (2) 95 percent or more of the proceeds of the issue are to be used for capital expenditures incurred by qualified borrowers for one or more qualified projects; (3) the qualified issuer designates the bond for purposes of § 54 and the bond is in registered form; and (4) the issue meets certain requirements described in § 54(h) with respect to the expenditure of bond proceeds.

Section 54(j)(4) defines a “qualified issuer” as: (1) a clean renewable energy bond lender (as defined in § 54(j)(2)); (2) a cooperative electric company (as defined in § 54(j)(1)); or (3) a governmental body. Section 54(j)(3) defines the term “governmental body” as any State, territory, possession of the United States, the District of Columbia, Indian tribal government, or any political subdivision thereof. Section 54(j)(5) provides that a “qualified borrower” is: (1) a mutual or cooperative electric company described in § 501(c)(12) or § 1381(a)(2)(C); or (2) a governmental body. Section 54(d)(2)(A) defines the term “qualified project” as any of the qualified facilities described in §§ 45(d)(1) through (d)(9) (determined without regard to any placed in service date) owned by a qualified borrower.

Notice 2005-98 solicits applications for allocations of the \$800,000,000 clean renewable energy bond limitation and provides guidance on certain other matters under § 54.

SECTION 3. TEMPORARY REGULATIONS

The Treasury Department and the Internal Revenue Service intend to issue

temporary and proposed regulations (the “Temporary Regulations”) under § 54 to provide guidance to holders and issuers of clean renewable energy bonds. It is anticipated that the Temporary Regulations will provide, in part, as follows:

1. For purposes of § 54, the term “qualified project” includes any facility owned by a qualified borrower that is functionally related and subordinate (as determined under § 1.103-8(a)(3) of the Income Tax Regulations) to any qualified facility described in §§ 45(d)(1) through (d)(9) (determined without regard to any placed in service date) and owned by such borrower.

2. For purposes of § 54, the term “political subdivision” will have the same meaning as in § 1.103-1.

3. A clean renewable energy bond may be issued on behalf of a State or political subdivision within the meaning of § 1.103-1(b) under rules similar to those for determining whether a bond issued on behalf of a State or political subdivision, constitutes an obligation of that State or political subdivision for purposes of § 103.

4. For purposes of § 54, the term “qualified borrower” includes an instrumentality of a State or political subdivision (as determined for purposes of § 103).

SECTION 4. DRAFTING INFORMATION

The principal authors of this Notice are Timothy L. Jones and Aviva M. Roth of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this Notice contact Timothy L. Jones or Aviva M. Roth at (202) 622-3980 (not a toll-free call).